

Brijbasi Lal Shrivastava

Vs

State of Madhya Pradesh

Criminal Appeal No. 250 of 1972

(Syed M. Fazal Ali, N. L. Untwalia JJ)

16.01.1979

JUDGMENT

FAZAL ALI, J. –

1. In this appeal by special leave the appellant has been convicted by the Special Judge, Tikamgarh under Sections 409, 467 and 477-A Indian Penal Code, and Section 5(2) of the Prevention of Corruption Act and sentenced under each count to rigorous imprisonment for one year and a fine of Rs. 50 under each count and in default one month's rigorous imprisonment under each head. All the sentences were direct to run concurrently.

2. It seems to us that this is rather an unfortunate case where a school teacher has been made the victim of unfortunate circumstances of which an under advantage has been taken by colleagues and others who were by no means friendly to him and who got an opportunity to bolster up a case against the appellant.

3. The appellant was a Principal of a Higher Secondary School Kakarhati and joined his assignment on November 21, 1963. He had preceded two other persons who were the Principals of the same school. The main charge against him was that on March 6, 1964 he had drawn a sum of Rs. 993.30 on the contingent bill for various items. One of the items was the salary of a Chowkidar Pancham Dhimar for 10 months at the rate of Rs. 50 p.m., the total amount being Rs. 500. The prosecution alleged that Pancham was never employed in the school and the appellant had merely drawn this amount on a fictitious plea in order to misappropriate it. On or about the same time, on the basis of same bill it was alleged that two items one of Rs. 20 and the other of Rs. 43 said to have been paid to a Kumaharin and Ramphal respectively had been drawn which also had been misappropriated by him and false entries in the contingent bill made in that regard. These two items however formed the subject-matter of Special Criminal Case No. 2 of 1966. It was tried by the same Special Judge who however rejected the prosecution case and acquitted the appellant of the charge relating to these items.

4. So far as the item relating to Rs. 500 was concerned, the Special Judge accepted the prosecution case and convicted the appellant as indicated above. On appeal the High Court confirmed the conviction as also the sentence and hence this appeal by special leave.

5. A detailed narrative of the facts leading to the charges against the appellant has been set out in the judgments of the High Court and that of the Special Judge and it is not necessary for us to repeat further details.

6. The case appears to have been started against the appellant on the basis of a complaint made by PW 8 Yagya Narain, a clerk who has actually drawn the amount on the orders of the appellant and who was later on dismissed from service by the appellant for some irregularities. The central evidence against the appellant consists of Ex. P-12 which is a sort of a confession made by the appellant to PW 10, Shri B. D. Naik, Assistant Divisional Superintendent, Education on September 19, 1964. PW 10 further took the abundant caution of taking a written statement signed by him from the appellant on the same date which is Ex. D-7 in the case. In this statement the appellant seems to have admitted to have falsely drawn Rs. 500 towards the salary of Pancham Chowkidar and subsequently is said to have redeposited this amount in the treasury. The High Court and the Special Judge have relied heavily on this document which really forms the sheet-anchor of the prosecution case. Apart from Ex. P-12 the other circumstances relied upon by the prosecution are :

(1) the fact that Pancham Chowkidar was never mentioned as an employee in the attendance register;

(2) that oral evidence of some witnesses has been adduced to show that Pancham Chowkidar never worked in the school at all;

(3) the evidence of PW 8 Yagya Narain that the amount of Rs. 500 was falsely drawn because no payment was made to Pancham Chowkidar. Pancham Chowkidar was also examined as PW 9 and he stated that he had not worked in the school but used to sleep in the house of the appellant.

7. We would first take up the effect of Ex. P-12 on the guilt of the appellant. We may mention here that Ex. P-12 contains an admission not only of the misappropriation of Rs. 500 but also of the two items of Rs. 20 and Rs. 43 which was the subject-matter of withdrawal by the same contingent bill and which formed the basis of Special Criminal Case No. 2 of 1966 tried by the same Special Judge. Regarding these two items the Special Judge has disbelieved the prosecution case and acquitted the appellant.

8. To begin with, therefore, Ex. P-12 has been found to be unreliable with respect to two out of the three items. This fact appears to have been completely overlooked by the Special Judge as also by the High Court. Counsel for the appellant before the High Court seems to have raised a question of issue estoppel which was rightly negatived by the High Court, because the issues in the two case were different though the evidence was more or less similar. Mr. Sanghi, counsel for the appellant fairly conceded that he was not in a position to press the plea of issue estoppel as regards Ex. P-12. It is not disputed that this was a confession made by the appellant to Mr. Naik who was his Superior Officer and was, therefore, a person in authority. Both the trial Court and the High Court have accepted this position.

9. Secondly, the appellant in his statement under Section 342 CrPC while answering the question put to him regarding this document stated as follows :

It is false that I wrote Ex. P-12 of my own accord. The truth is that is when Shri B. D. Naik and his party came to Kakarhati and after getting my already written reply signed they forced me to write Ex. P-12 and I wrote Ex. P-12 accordingly. It bears my signature at A to A, B to B. It contains the writing C to C in the hand of B. D. Naik and his signature is D to D.

10. The evidence of PW 10 the officer who had taken the statement of the appellant shows that he had administered an oath to the appellant before taking his statement although he was not empowered to administer any oath. This circumstance by itself would amount to a concealed threat, because if the statement was found to be false the appellant may have entertained a genuine belief that he might be prosecuted. Secondly, it appears from the judgment of Special Criminal Case No. 2 of 1966 that the charge with respect to two items mentioned in this very document, viz., the item relating to misappropriation of Rs. 43 and Rs. 20 had been disbelieved and the prosecution case regarding the same rejected. Thus, the veracity of the document Ex. P-12 was shaken to a very great extent. There can be no doubt that the judgment of the Special Judge in Special Criminal Case No. 2 of 1966 would be admissible to show what was the issue in question in that case and the decision thereof. As the appellant had been acquitted of the charge relating to these two items, we are not in a position to attach much importance to the document Ex. P-12 against the appellant with respect to the item of Rs. 500, particularly when the appellant had definitely pleaded that the statements was not his voluntary statement but was taken by PW 10 under duress. Such a statement was, therefore, clearly inadmissible under Section 24 of the Evidence Act. But that apart, even if the statement is admissible having regard to the circumstances mentioned above, its probative value is precious little. Thus, the documents Exs. P-12 and D-7 have to be excluded from consideration for the reasons given above.

11. Another circumstances which throws serious doubt on the prosecution case is that the entire proceeding appear to have been started on the basis of a complaint filed by the clerk PW 8 Yagya Narain. Yagya Narain was a person who had actually drawn the money from the Treasury on the basis of the bill prepared by the appellant and as he knew full well that no person of the name of Pancham Chowkidar had ever worked in the school, he could have at once protested to the appellant as to why this money was being withdrawn by him or should have refused to draw the bill as it did not represent the correct state of affairs. Yagya Narain does not appear to have done anything of the sort and kept quiet. The evidence shows that the cash book was missing and this was one of the reasons why the appellant had terminated the services of Yagya Narain. In these circumstances, Yagya Narain had his own axe to grind against the appellant and filed the complaint before the Vigilance Department only after he was dismissed from service. The amount was drawn on March 6, 1964 and the complaint was sent on or about August 18, 1964. Thus, Yagya Narain kept quiet for full five months and this shows that he was in the nature of an accomplice and turned hostile against the appellant only when he was dismissed from service. We are, therefore, unable to place any reliance on the evidence of Yagya Narain, PW 8.

12. The Courts below also relied on the circumstance that Pancham Chowkidar was not employed in the school. For this purpose reliance was placed on the fact that the name of Pancham Chowkidar did not find place in the attendance register of the school. This is undoubtedly so but then this circumstance does not take us anywhere because the admitted position is that Ramphal, the gardener and Rambai undoubtedly worked in the school and yet their names also are not found in the attendance register but the amount withdrawn by the appellant in respect of the expenses incurred for them has not been doubted. In these circumstances, therefore, the mere absence of any mention of the name of Pancham Chowkidar in the attendance register would not conclusively prove that he was not an employee of the school.

13. Another important circumstance which appears to have been overlooked by the courts below is that the prosecution itself relies on Ex. P-26 which is a receipt alleged to have been given by Pancham and PW 9 Pancham has admitted his signature on this receipt. It was however alleged by the prosecution that this receipt was taken by the appellant without paying any amount to Pancham

Chowkidar. This part of the prosecution case cannot be believed because the best person to deny of fact whether or not he had received the money under the receipt Ex. P-26 was Pancham himself who had deposed as PW 9. Nowhere in his evidence he has said a word that he did not receive the money from the appellant or that the receipt was forcibly taken by the appellant without paying him any money. It is true that in his cross-examination he has denied the suggestion that when Yagya Narain Patel PW 8 produced him before the accused he said that he had received the amount of Rs. 500. This is however quite a different matter. The witness does not categorically say anywhere in his evidence that he had not received Rs. 500 at any time and had signed the receipt without getting the money. Furthermore, this witness admits that he used to work at the house of the appellant at Panna. According to the prosecution, the appellant had drawn pay of Pancham Chowkidar only for 10 months at the rate of Rs. 50 per month. The possibility that the appellant may have committed a breach of the rules by taking work from him at his house instead of sending him to the school cannot be excluded. Even if he violated the rules the charge against him is not that he had violated the rules with a view to cause wrongful loss to the Government. In view of this clear statement of Pancham Chowkidar we are unable to place any reliance on the general statement of some witnesses who deposed that they did not find Pancham working in the school.

14. PW 6 Puralal who was a teacher of the school has no doubt said that no person of the name of Dhimar was working in those days. Moreover, he further admits that in Ex. P-4 which is the attendance register, the attendance of only those persons is entered who remain present in the school during working time. Obviously, Pancham was working as chowkidar during right time and, therefore, his name may not have been mentioned in the attendance register.

15. Lastly, PW 4 Puralal used to work during daytime in the school and he does not say that he ever visited the school during night. In these circumstances, as Pancham's duty started at night it cannot be said that this witness or for that matter any other witness was competent to depose that Pancham Chowkidar was not working in the school during night.

16. In these circumstances, therefore, we are unable to accept the prosecution case that the appellant had drawn Rs. 500 and misappropriate the same and made false entries in the accounts. The detailed contingent bill does mention the name of Pancham Chowkidar as an employee of the school and a sum of Rs. 500 was due towards his salary which was drawn by the appellant in this bill. For these reasons, therefore, we are of the opinion that the charge against the appellant has not been substantiated. We, therefore, allow this appeal, set aside the convictions and sentences passed on the appellant and acquit him of the charges framed against him. The appellant who is on bail will now be discharged from his bail bonds.

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